

121 FERC ¶ 61,126  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Entergy Services, Inc.

Docket No. ER07-682-001

ORDER DISMISSING REHEARING REQUEST AS DEFICIENT

(Issued November 1, 2007)

1. On June 25, 2007, the Louisiana Public Service Commission (Louisiana Commission) filed a request for rehearing of the Commission's May 25, 2007 order<sup>1</sup> addressing amendments to the Entergy System Agreement (System Agreement) submitted by Entergy Services, Inc. (Entergy), on behalf of the Entergy Operating Companies.<sup>2</sup> In this order, as discussed below, the Commission finds the Louisiana Commission's request for rehearing to be deficient, and therefore, dismisses the rehearing request.

**I. Background**

2. On June 14, 2001, the Louisiana Commission filed a complaint pursuant to section 206 of the Federal Power Act (FPA).<sup>3</sup> The Louisiana Commission alleged that the System Agreement, a rate schedule that includes various service schedules governing, among other things, the allocation of certain costs associated with the integrated operations of the Entergy system, no longer operated to produce rough production cost equalization.

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<sup>1</sup> *Entergy Services, Inc.*, 119 FERC ¶ 61,190 (2007) (May 2007 Order).

<sup>2</sup> The Operating Companies are Entergy Arkansas, Inc., Entergy Gulf States, Inc. (Entergy Gulf States), Entergy Louisiana LLC, Entergy Mississippi, Inc., and Entergy New Orleans, Inc.

<sup>3</sup> 16 U.S.C. § 824e (2000).

3. In Opinion No. 480,<sup>4</sup> the Commission found that rough production cost equalization had been disrupted on the Entergy system. Opinion Nos. 480 and 480-A approved a numerical bandwidth of +/- 11 percent of the Entergy system average production cost to maintain the rough equalization of production costs among the Entergy Operating Companies and required annual filings beginning in June 2007. The Commission stated that the bandwidth would be implemented prospectively and would be effective for calendar year 2006, and that any equalization payments would be made in 2007 after a full calendar year of data became available.

4. On April 10, 2006, Entergy submitted a compliance filing to implement the directives of Opinion Nos. 480 and 480-A. The compliance filing included proposed revisions to Service Schedule MSS-3<sup>5</sup> that had not been ordered by the Commission in Opinion Nos. 480 and 480-A. In its order on the compliance filing,<sup>6</sup> the Commission rejected these non-compliant amendments and denied, as beyond the scope of the compliance filing, Entergy's request to make adjustments to the methodology reflected in Exhibits ETR-26 and ETR-28. The Commission explained that Entergy must comply with the requirements of Opinion Nos. 480 and 480-A, including the requirement to follow the methodology set forth in Exhibits ETR-26 and ETR-28. The Commission also stated that Entergy should make a section 205 filing if it desired to make any changes to the methodology in Exhibits ETR-26 and ETR-28.<sup>7</sup>

5. On March 30, 2007, Entergy filed, pursuant to section 205, four revisions to Service Schedule MSS-3. First, Entergy proposed to revise section 30.12 to provide that net general and intangible plant and related depreciation and amortization expenses be allocated on the basis of labor ratios, not plant ratios as initially calculated in Exhibit ETR-26. Second, Entergy proposed to revise section 30.12 and footnote 5 to provide that

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<sup>4</sup> *Louisiana Public Service Comm'n v. Entergy Services, Inc.*, Opinion No. 480, 111 FERC ¶ 61,311 (2005) (Opinion No. 480), *aff'd*, *Louisiana Public Service Comm'n v. Entergy Services, Inc.*, Opinion No. 480-A, 113 FERC ¶ 61,282 (2005) (Opinion No. 480-A).

<sup>5</sup> Service Schedule MSS-3 includes a methodology for pricing energy exchanged among the Operating Companies and provides for an after-the-fact, hour-by-hour allocation of the cost of energy from an Operating Company whose generation provided energy in excess of that company's load to an Operating Company that produced less than its load. Entergy also included the formulas for implementing the rough production cost equalization bandwidth remedy required by Opinion No. 480 in Service Schedule MSS-3.

<sup>6</sup> *Louisiana Public Service Comm'n v. Entergy Services, Inc.*, 117 FERC ¶ 61,203 (2006).

<sup>7</sup> *Id.* P 69.

payroll costs charged to each Operating Company by Entergy Operations, Inc. and Entergy be included as part of each Operating Company's labor costs. Third, Entergy proposed to change the state income tax rate utilized in Service Schedule MSS-3 for Entergy Gulf States to include the average of the state income tax rates for Texas and Louisiana, rather than using Louisiana's state income tax rate alone. Fourth, Entergy proposed to allocate Account 923 on the basis of labor ratios, not plant ratios as initially calculated in Exhibit ETR-26.

6. In the May 2007 Order, the Commission found that Entergy's proposed amendments raised issues of material fact that are more appropriately addressed in hearing and settlement judge procedures.<sup>8</sup> Therefore, the Commission accepted and suspended the proposed amendments for a nominal period, made them effective May 30, 2007, subject to refund, and set them for hearing and settlement judge procedures.<sup>9</sup>

7. Additionally, the Commission explained that it disagreed with the Louisiana Commission's argument that, to be consistent with the remedy adopted in Opinion No. 480, the proposed revisions should not be permitted to take effect until a future calendar year. The Commission stated that Opinion Nos. 480 and 480-A did not change the fundamental tenets of section 205 of the FPA,<sup>10</sup> i.e., public utilities have a statutory right to amend their rates and charges and to propose that, absent waiver, the amendments be made effective after 60 days' notice. Therefore, because Entergy made its filing consistent with section 205 of the FPA (with the 60 days' notice), the Commission found that the appropriate effective date for the proposed amendments is May 30, 2007.<sup>11</sup>

## **II. Rehearing Request**

8. The Louisiana Commission argues that Entergy's filing seeks to retroactively recalculate bandwidth remedy payments for the calendar year remedy period 2006 and adjust the 2007 remedy payments.<sup>12</sup> Rather, to be consistent with Opinion Nos. 480 and 480-A, the Louisiana Commission states, the Commission cannot permit a change in payments and receipts until the remedy is applied to data for a prospective calendar year following the filing. Thus, the Louisiana Commission maintains that the proposed

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<sup>8</sup> May 2007 Order, 119 FERC ¶ 61,190 at P 22.

<sup>9</sup> *Id.* P 23.

<sup>10</sup> 16 U.S.C. § 824d (2000).

<sup>11</sup> May 2007 Order, 119 FERC ¶ 61,190 at P 19.

<sup>12</sup> Louisiana Commission Request for Rehearing at 4.

amendments should not be permitted to go into effect until 2009.<sup>13</sup> The Louisiana Commission contends that the Opinion No. 480-A statement that “adoption of a remedy that would involve prior years would necessarily result in refunds, which . . . we are specifically prohibited from providing under section 206(c) of the FPA” is equally applicable to a section 205 filing.<sup>14</sup> Also, the Louisiana Commission states that the Commission’s ruling in the May 2007 Order is inconsistent with the methodology previously established, i.e., application of the bandwidth remedy to a prospective calendar year’s data, and “under that rationale, it would be retroactive ratemaking.”<sup>15</sup>

9. The Louisiana Commission also contends that the Commission has acted inconsistently because it “has given Entergy the opportunity after a hearing to change the ETR-28 and ETR-26 methodologies on a retroactive basis and has denied that opportunity to the Louisiana Commission in Docket No. EL07-52-000.”<sup>16</sup> The Louisiana Commission argues that if Entergy is allowed to show why it should be permitted to change Exhibit ETR-26 and Exhibit ETR-28 on a retroactive basis, the Louisiana Commission should be granted the same right.<sup>17</sup>

### **III. Discussion**

10. We find that the Louisiana Commission’s rehearing request is deficient because it fails to include a Statement of Issues section separate from its arguments, as required by Rule 713 of the Commission’s Rules of Practice and Procedure.<sup>18</sup> Rule 713(c)(2) requires that a rehearing request include a separate section entitled “Statement of Issues” listing each issue presented to the Commission in a separately enumerated paragraph that

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<sup>13</sup> *Id.* at 1. The Louisiana Commission thus requests that payments be made in 2009, based on calendar year 2008 data.

<sup>14</sup> *Id.* at 3.

<sup>15</sup> *Id.* at 4.

<sup>16</sup> Louisiana Commission Request for Rehearing at 1-2. *Louisiana Public Service Comm’n v. Entergy Corp.*, 119 FERC ¶ 61,212 (2007) (Complaint Order).

<sup>17</sup> Louisiana Commission Request for Rehearing at 5.

<sup>18</sup> 18 C.F.R. § 385.713(c)(2) (2007). *See Revision of Rules of Practice and Procedure Regarding Issue Identification*, Order No. 663, FERC Stats. & Regs. ¶ 31,193 (2005), *order on reh’g*, Order No. 663-A, FERC Stats. & Regs. ¶ 31,211 (2006) (amending Order No. 663 to limit its applicability to rehearing requests).

includes representative Commission and court precedent on which the participant is relying.<sup>19</sup> Under Rule 713, any issue not so listed will be deemed waived. Accordingly, we will dismiss the Louisiana Commission's rehearing request.<sup>20</sup>

11. However, if the Commission were to consider the Louisiana Commission's rehearing request, we would deny it. As discussed below, we find that the Louisiana Commission's arguments on rehearing are without merit.

12. We disagree with the Louisiana Commission that Entergy's proposed amendments retroactively recalculate bandwidth remedy payments. Rather, Entergy properly filed the proposed amendments pursuant to section 205, and the Commission, in accordance with section 205, made them effective, after 60 days' notice. As the Commission explained in the May 2007 Order, the holding in Opinion Nos. 480 and 480-A did not change the fundamental doctrine of section 205 of the FPA, which provides public utilities a statutory right to amend their rates and charges and to propose that, absent waiver, the amendments be made effective after 60 days' notice. In adhering to section 205 of the FPA, the Commission simply cannot and did not change that basic right accorded by the FPA. Accordingly, in the May 2007 Order, the Commission held that Entergy's filing was consistent with section 205 and that the appropriate effective date for the proposed amendments is May 30, 2007, after 60 days' notice. Therefore, we find that the May 2007 Order is consistent with the FPA, and does not constitute retroactive ratemaking.<sup>21</sup>

13. Furthermore, we disagree with the Louisiana Commission's argument that the Commission acted inconsistently. In the May 2007 Order, the Commission, acting pursuant to section 205 of the FPA, accepted Entergy's proposed amendments, suspended

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<sup>19</sup> As explained in Order No. 663, the purpose of this requirement is to benefit all participants in a proceeding by ensuring that the filer, the Commission, and all other participants understand the issues raised by the filer, and to enable the Commission to respond to these issues. Having a clearly articulated Statement of Issues ensures that issues are properly raised before the Commission and avoids the waste of time and resources involved in litigating appeals regarding which the courts of appeals lack jurisdiction because the issues on appeal were not clearly identified before the Commission. *See* Order No. 663, FERC Stats. & Regs. ¶ 31,193 at P 3-4.

<sup>20</sup> *See, e.g., Duke Power Co., LLC*, 116 FERC ¶ 61,171 (2006); *South Carolina Electric & Gas Co.*, 116 FERC ¶ 61,218 (2006).

<sup>21</sup> Contrary to the Louisiana Commission's assertions, the Commission's obligation in addressing Entergy's filing is not to be consistent with Opinion Nos. 480 and 480-A, which involved a complaint under section 206 of the FPA, but is to be consistent with section 205 of the FPA, which the Commission has done in this proceeding. Simply put, the statutory requirements of sections 205 and 206 are different, a fact that the Louisiana Commission is unwilling to accept.

them for a nominal period, made them effective subject to refund and established hearing and settlement judge procedures. Any proposed changes found to be just and reasonable could only be made effective prospectively, after 60 days' notice, consistent with section 205 of the FPA.<sup>22</sup> In the Complaint Order, the Commission determined that a hearing was not necessary, fully addressed the merits of the issues raised by the Louisiana Commission, and found that the Louisiana Commission had failed to meet its burden under section 206 of the FPA with respect to any of the issues it raised.<sup>23</sup> Therefore, regardless of the different outcome in the two proceedings, the Commission treated the Louisiana Commission and Entergy consistently with the provisions of the FPA.<sup>24</sup>

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<sup>22</sup> The most the Commission could have done, had it been warranted, would have been a five-month suspension. Under section 205 of the FPA, the Commission certainly could not have delayed the effectiveness until 2009.

<sup>23</sup> Complaint Order, 119 FERC ¶ 62,212 at P 20, 37. Section 206 of the FPA provides that whenever the Commission finds, either on its own motion or on complaint, that any existing rates, charges or classifications of a public utility are unjust, unreasonable, unduly discriminatory or preferential, it shall determine the just and reasonable rates, charges or classifications and establish the same by order. Section 206(b) states that in any proceeding under this section, "the burden of proof to show that any rate, charge, classification, rule, regulation, practice, or contract is unjust, unreasonable, unduly discriminatory, or preferential shall be upon the Commission or the complainant." 16 U.S.C. § 824e(b) (2000).

<sup>24</sup> Moreover, we note that the Commission recently considered the merits of other Entergy proposals under section 205 of the FPA to amend the System Agreement in Docket Nos. ER07-683-000 and ER07-684-000 and rejected them. *Entergy Services, Inc.*, 119 FERC ¶ 61,191, at P 24 (2007) (holding that the Commission was "not persuaded by Entergy that the new section is needed because of disputes that have arisen in proceedings pending in Louisiana and Arkansas, concerning the appropriate allocation of these payments or receipts to retail and wholesale customers"); *Entergy Services, Inc.*, 119 FERC ¶ 61,192, at P 18 (2007) (rejecting the proposed amendment to the System Agreement because "the hedged item is natural gas which is reflected in Account 501, therefore the gains or losses on gas hedges are to be charged or credited to Account 501, as appropriate").

The Commission orders:

The Louisiana Commission's rehearing request is hereby dismissed.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.